

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CK FRANCHISING, INC. :
v. : Civil Action No. DKC 2007-1852
DWAYNE A. FORD, ET AL. :
:

MEMORANDUM OPINION

Presently pending and ready for resolution is the motion for reconsideration filed by Plaintiff CK Franchising, Inc. ("CK Franchising"). (Paper 33). The issues are fully briefed and the court now rules pursuant to Local Rule 105.6, no hearing being deemed necessary. For the following reasons, the motion will be denied.

I. Background

Plaintiff CK Franchising is the franchisor of Comfort Keepers in-home care franchises. Defendants Dwayne Ford and Audrey Ford entered into a franchise agreement with Plaintiff in December 2002. The parties' relationship deteriorated and, on July 13, 2007, Plaintiff filed a complaint alleging breach of contract and defamation. (Paper 1). Plaintiff simultaneously filed a motion for temporary restraining order ("TRO"). (Paper 2). Plaintiff filed an amended complaint on August 2, 2007 to add a request for attorneys' fees. (Paper 11). Plaintiff alleges that "[t]he Franchise Agreement also provides that the prevailing party in any action to enforce its terms and conditions is entitled to its costs

and reasonable attorneys' fees." (*Id.* ¶ 30). The same day, the court held a hearing on Plaintiff's TRO. On August 3, 2007, this court granted in part and denied in part Plaintiff's motion, holding that Defendants could continue to service current clients, but must deposit royalties into an escrow account. (Paper 16). The court also directed the parties to participate in mediation or arbitration. At that point, the case was stayed and closed administratively.

There were no further proceedings in this court until the following spring, when the parties were involved in arbitration and a discovery dispute arose. Thereafter, the parties participated in an arbitration hearing. The arbitrator found in favor of Plaintiff on two of four counts, and denied all of Defendants' claims. The arbitrator found that Plaintiff was not entitled to fees because it did not prevail on all of its claims or requests for damages. Plaintiff filed a motion to modify award, arguing that the arbitrator's decision was erroneous, but the arbitrator denied the motion. On November 10, 2008, Plaintiff filed in this court a motion to confirm arbitration award and for attorney's fees. (Paper 28).

On April 22, 2009, the court granted Plaintiff's motion to confirm arbitration award, denied Plaintiff's motion for attorney's fees, and closed this case. (Paper 32). The court explained that the arbitrator knew of the proceedings before this court at the

time of arbitration and could have awarded costs and fees during the arbitration process. Plaintiff subsequently filed a motion for reconsideration. (Paper 33).

II. Motion for Reconsideration

A. Standard of Review

Courts have recognized three limited grounds for granting a motion for reconsideration pursuant to Federal Rule of Civil Procedure 59(e): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *United States ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002)(citing *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998), cert. denied, 538 U.S. 1012 (2003)). "A motion to reconsider is not a license to reargue the merits or present new evidence." *RGJ, Inc. v. Unified Indus., Inc.*, 963 F.2d 658, 662 (4th Cir. 1992)). Motions for reconsideration are "an extraordinary remedy which should be used sparingly." *Pacific Ins. Co.*, 148 F.3d at 403.

B. Analysis

Plaintiff filed a motion for reconsideration of the court's April 22, 2009 order confirming the arbitration award and denying attorneys' fees. Plaintiff seeks reconsideration of the portion of the order denying the motion for attorneys' fees relating to the costs and fees associated with the temporary restraining order and

preliminary injunction it obtained in the summer of 2007. The court denied Plaintiff's request for fees reasoning, *inter alia*, that it was inappropriate for Plaintiff to seek attorneys' fees for the first time in its motion for fees. Plaintiff argues that the court erred by overlooking the amended complaint in which it specifically requested attorneys' fees.

While the court recognizes that Plaintiff requested attorneys' fees in its amended complaint, Plaintiff's motion for reconsideration nonetheless fails.¹ As previously noted, the arbitrator certainly knew of the proceedings before this court at the time of arbitration. In Plaintiff's pre-arbitration statement, it informed the arbitrator of the court proceedings, including the following:

[Plaintiff] advised the Fords that their attempted termination was ineffective and violated the terms of the Agreement and that [CK Franchising] was prepared to file an emergency motion for a temporary restraining order ("TRO") to enjoin termination. . . .

Accordingly, on July 14, 2007, [Plaintiff] filed with the United States District Court for the District of Maryland a complaint and a motion for preliminary and permanent injunction against the Fords seeking to enjoin the Fords from breaching the covenant not to compete, and from publishing false and defamatory statements about [Plaintiff].

¹ Plaintiff correctly points out that the court initially overlooked the Amended Complaint that was filed at 1:16 p.m., on August 2, 2007, immediately before the commencement of the hearing.

After three hearings, two of which were evidentiary, Judge Deborah Chasanow found that [Plaintiff] proved that the Fords unilaterally terminated the Agreement without giving proper notice or opportunity to cure. The Court ruled that the Fords' franchise was terminated. The Court also found that the covenant not to compete was enforceable. Judge Chasanow found that [Plaintiff] proved that its good will and reputation would be irreparably harmed by the Fords' breach of the Agreement and noted that [Plaintiff] was likely to succeed on the merits. The Court also prohibited the Fords from signing up new clients in the franchise territory.

The Court, however, permitted the Fords to continue to provide services to current clients because it did not want to force clients to select a new caregiver, or the caregivers, a new employer. The Fords were also ordered to place in escrow the royalty payments they would otherwise owe [Plaintiff] for servicing clients in the franchise territory pending the outcome of the mediation and/or arbitration. To date, the Fords have escrowed approximately \$6,000 in royalty payments. The Court also ordered the parties to promptly proceed to arbitration.

[Plaintiff] has asserted four claims against the Fords: breach of contract for wrongful termination of the franchise agreement; breach of contract for breach of the non-disclosure and non-competition agreement; defamation; and tortious interference with contractual relations.

(Paper 34, Ex. 2, at 3-4)

Plaintiff further stated in its pre-arbitration statement:

The Agreement provides that the prevailing party is entitled to recover reasonable court or arbitral costs, or both, and reasonable attorneys' fees in enforcing the terms of the Agreement. [Plaintiff] has incurred and will incur approximately \$100,000 in attorneys'

fees and costs in enforcing the terms of the Agreement.

(*Id.* at 6).

Plaintiff asserts that the arbitrator did not have jurisdiction over the court proceeding in which Plaintiff sought provisional injunctive relief. However, as Defendants correctly point out, the attorneys' fees request in the first amended complaint did not strip the arbitrator of the power to decide all the attorneys' fees issues before him, including those fees associated with the court proceeding. The Amended Complaint also sought the damages that were before the arbitrator. Each cause of action was submitted and fully considered by the arbitrator, as was the issue of attorneys' fees related to both the proceeding in this court and in arbitration.

III. Conclusion

For the foregoing reasons, Plaintiff's motion for reconsideration will be denied. A separate Order will follow.

/s/
DEBORAH K. CHASANOW
United States District Judge